



May 8, 2000

Mr. Michael J. Cosentino
Bryan City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2000-1780

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134969.

The City of Bryan (the “city”) received requests for information revealing city expenditures and other information related to the public power utility, Bryan Texas Utilities (“BTU”), governed by the Bryan city council. You assert that expenditures made by the city for BTU advertising purposes, directly or through BTU; a list of the suppliers of fuel and fuel related items which includes the prices paid to these suppliers; and the W-2 form of a specified employee are excepted from public disclosure under sections 552.104 and 552.131 of the Government Code. You have provided a representative sample of the responsive information, labeled as exhibits C, E, F, and G to this office for review.¹ We assume that all information responsive to these requests for which you have not asserted an exception to disclosure has been released. The requestor has also provided comments to this office. We have considered the exceptions you claim and the comments of the requestor and have reviewed the submitted information.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Although you list Government Code section 552.104 as a pertinent exception, you do not provide comment in support of that exception and it is therefore not addressed in this decision. Gov’t Code 552.301.

section encompasses information protected by other statutes. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Therefore the submitted W-2 forms must be withheld under section 552.101 of the Government Code.

Government Code section 552.131, the "public power utility competitive matters" exception, provides:

(a) In this section:

- (1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.
- (2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.
- (3) "Competitive matter" means a utility-related matter that the public power utility governing body in good faith determines by a vote under this section is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors but may not be deemed to include the following categories of information:
 - (A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;
 - (B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;
 - (C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management,

identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility's performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city's general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(b) Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

(c) In connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306 the attorney general shall find the requested information to be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request:

(1) that the public power utility governing body has failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter; or

(2) that the information or records sought to be withheld are not reasonably related to a competitive matter.

This provision of the Government Code excepts from public disclosure information reasonably related to a "competitive matter" as that term is determined by the vote of a public power utility governing body acting in good faith. The governing body in this instance is the Bryan City Council. You have provided a copy of that body's Resolution 2639, in which the council determined categories of information as BTU "competitive matters" as contemplated by section 552.131 of the Government Code. Section I of Resolution 2639 provides that the following categories of information are "competitive matters" of BTU:

A. Financial information, including

- (1) Strategic and business plans;
- (2) Rate and pricing strategies and studies;
- (3) Revenue and expense projections and targets;
- (4) Fuel pricing and usage;
- (5) Fuel hedging/risk management strategies;
- (6) Cost of service studies.

B. Purchasing and Contract Information, including

- (1) Power supply pricing, proposals and contracts;
- (2) Power sales pricing, proposals and contracts;
- (3) Fuel contracts and proposals
- (4) Fuel transportation pricing and contracts;
- (5) Purchasing information, including bids, proposals and contracts;

C. Business Operations Information, including

- (1) Work management studies;
- (2) Benchmarking information;
- (3) Market plans and strategies;
- (4) Personnel staffing levels and compensation

D. Generation/System Operations Information, including

- (1) Generating unit operating and performance data, including heat rates;
- (2) Engineering and design of generation units and transmission/distribution system;
- (3) Control system design and capabilities;

- (4) Maintenance schedules;
- (5) Unit and system outage information;
- (6) Load forecasts;
- (7) Generation/distribution system improvement plans and work papers;
- (8) Generation unit and system audits.

E. Competitive customer information, including

- (1) Customer lists or identification data, consumption data, or billing/account data.

You assert that suppliers and prices paid to suppliers for fuel and fuel-related items is in the category of "competitive matters" created under 1(B)(4) of the resolution. In that section the governing body determined that "[f]uel transportation pricing and contracts" are "competitive" matters. We consider the suppliers of the fuel and fuel related items to be reasonably related to this category of information. However, aggregated information reflecting expenditures of funds of the public power utility may not be considered a "competitive matter." Gov't Code §552.131(a)(3)(E). Therefore, that portion of exhibit G which indicates suppliers and prices paid to specific suppliers for fuel and fuel related items may be withheld under section 552.131 of the Government Code and that portion of this exhibit which consists of aggregate information (e.g. total monthly fuel costs line items) must be released.

You assert that information identifying advertising expenditures for BTU is in the category of "competitive matters" created under 1(C)(4) of the resolution. In that section the governing body determined that "[p]ersonnel staffing levels and compensation" are "competitive" matters. We find that advertising expenditure information is not reasonably related to personnel staffing levels or compensation, and is therefore, not reasonably related to a "competitive matter" under section 552.131(a)(3). Gov't Code § 552.131(c)(2). We conclude that you have not demonstrated that advertising expenditure information is excepted from disclosure under section 552.131. This information must therefore be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 134969

Encl Submitted documents

cc: Ms. Beth Price
1312 Brook Hollow Drive
Bryan, Texas 77802
(w/o enclosures)